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MOTION TO SEVER

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORLAND DIVISION

DON'T SHOOT PORTLAND, a nonprofit corporation, in its individual capacity, NICHOLAS J. ROBERTS, in an individual capacity and on behalf of themselves and all others similarly situated, MICHELLE "MISHA" BELDEN, in an individual capacity and on behalf of themselves and all others similarly situated, and ALEXANDRA JOHNSON, in an individual capacity and on behalf of themselves and all others similarly situated,

Plaintiffs

v.

CITY OF PORTLAND, a municipal corporation, MULTNOMAH COUNTY, Defendant.

Case No. 3:20-cv-00917-HZ

MOTION TO SEVER PLAINTIFF ALEXANDRA JOHNSON'S CLAIMS 1 AND 2 AGAINST DEFENDANT MULTNOMAH COUNTY

(UNOPPOSED)

COMES NOW, Plaintiff and moves this Court to sever Plaintiff Alexandra Johnson's Claims 1 and 2 against Defendant Multnomah County from this case while leaving Claims 1 and 2 against the Defendant City of Portland in this case. This Motion is brought pursuant to Fed. R. Civ. Pro. 21. Per LR 7-1, Plaintiff Johnson's attorneys conferred on the phone with Counsel for Defendant Multnomah County, B. Andrew Jones, and Defendant County does not oppose the relief sought by this motion. Plaintiff Johnson's attorneys also conferred with Defendant City of Portland's counsels via email, and they do not oppose the relief sought by this motion.

Plaintiff intends to file a severed Complaint against Defendant Multnomah County if severance has been granted. Plaintiff has attached her proposed severed Complaint against Multnomah County as Exhibit 1.

DISCUSSION

Fed. R. Civ. Pro. 21 provides in part: “On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.”

Where severance is appropriate, “the court can generally dismiss all but the first named plaintiff without prejudice to the institution of new, separate lawsuits by dropping the plaintiff’s claims ‘against some or all of the present defendants based on the claim or claims attempted to be set forth in the present complaint.’” *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997) (quoting *Aaberg v. ACandS Inc.*, 152 F.R.D. 498, 501 (D. Md. 1994)). “The order severing this matter, and allowing the claims to proceed as separate actions is non-dispositive.” *Mattson v. Quicken Loans, Inc.*, No. 3:17-cv-01840-YY, 2018 WL 2749571, at *5 (D. Or. June 7, 2018) (citing *Behroozi v. New Albertson’s, Inc.*, No. 2:11-cv-00579-JCM-NJK, 2014 WL 5469033, at *1 (D. Nev. Oct. 24, 2014) (“When a court grants a motion to sever a claim, the suit on that claim simply continues in another guise,” rendering the decision on the motion a “non-dispositive matter[] properly determined by a magistrate judge”).

Defendant Multnomah County can be properly severed from the present case without prejudice to the remaining parties and claims.¹ While Plaintiff Johnson’s Claims 1 and 2 do involve facts, legal questions, and temporal relation to her claims against the Defendant City of Portland, the ultimate relief sought against Defendant City of Portland would be more efficiently

¹ While Fed. R. Civ. Pro. 20 is partly implicated when severing parties, Plaintiff Johnson is not motioning this Court to rule on proper or improper joinder of Defendant Multnomah County, nor does she concede that Defendant Multnomah County was improperly joined in this matter.

litigated separate from the damages claim against Defendant County. Particularly, the money damages claims against the County specify a particular date and time of the County's alleged tortious conduct. Through litigation, Plaintiff Johnson has learned that Defendant City was not involved in Defendant County's alleged tortious conduct on this occasion. Lastly, Plaintiffs' proposed Fed. R. Civ. Pro. 23(b) classes only seek certification on matters related to the City, and not the County. As class certification will likely delay resolution in Plaintiff Johnson's Claims against the County, it would be more expeditious for the parties' and the Court's time to litigate those claims separately.

CONCLUSION

Plaintiff Johnson requests that the relief motioned for is GRANTED, and she be allowed to file her proposed severed Complaint against Multnomah County under a new case caption and number.

DATED: July 2, 2021.

/s/ Juan C. Chavez

Juan C. Chavez
Of Attorneys for Plaintiffs